

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

KRISTAN SEIBERT

PLAINTIFF

v.

CIVIL ACTION NO. 1:14-CV-188-KS-MTP

JACKSON COUNTY, MISSISSIPPI, et. al.

DEFENDANTS

ORDER

THIS MATTER is before the Court on Plaintiff's Motion [163] to Amend Complaint.

Having carefully considered the Motion [163], the Court finds that the motion should be granted.

Plaintiff seeks to file an amended complaint in order to new add claims that accrued on or about September 8, 2017, against Defendant, Travelers Casualty and Surety Company of America, for breach of contract and related claims arising out of public official bonds. *See* Motion [163]. Defendant Travelers Casualty and Surety Company of America argues that the Motion to Amend should be denied as futile as Plaintiff has failed to state a claim against it. *See* Response in Opposition [168] (*citing* Fed Rule Civ. Pro. 12(b)(6)).

Courts may freely grant leave to amend if justice so requires. Fed Rule Civ. Pro. 15(a). The Fifth Circuit "examines five considerations to determine whether to grant a party leave to amend...1) undue delay, 2) bad faith or dilatory motive, 3) repeated failure to cure deficiencies by previous amendments, 4) undue prejudice to the opposing party, and 5) futility of the amendment." *Smith v. EMC Corp.*, 393 F.3d 590, 595 (5th Cir. 2004). "Absent any of these factors, the leave sought should be 'freely given.'" *Id.* (*citing Foman v. Davis*, 371 U.S. 178, 182 (1962)).

Defendant only argues that the amendment would be futile. The undersigned cannot conclude on the current record that the amendment would clearly be futile. The issues raised in

the Defendant's response [168] may be addressed by proper motion to the District Judge after the amended complaint has been filed. Under the circumstances, the Court finds that the motion [163] should be granted.

IT IS, THEREFORE ORDERED that:

1. Plaintiff's Motion [163] to Amend Complaint is GRANTED.
2. Plaintiff shall file the "Second Amended Complaint" that accompanied the motion [163] on or before October 30, 2017.
3. Defendant Travelers Casualty and Surety Company of America shall file an answer or otherwise responsive pleading to the forthcoming "Second Amended Complaint" on or before November 13, 2017.

SO ORDERED, THIS the 23rd day of October, 2017.

s/ Michael T. Parker

United States Magistrate Judge